IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION

AT HOME COMPANION CARE, LLC,	)	
	)	
Plaintiff,	)	Civil Action No. 1:16-cv-237
	)	
v.	)	Chief Magistrate Judge
	)	Susan Paradise Baxter
UBS FINANCIAL SERVICES, INC.,	)	
	)	
Defendant.	)	

DEFENDANT UBS FINANCIAL SERVICES, INC.'S MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(7), defendant UBS Financial Services, Inc. ("UBS"), by and through its undersigned counsel, hereby files its motion to dismiss the complaint (the "Complaint"), ECF 1, filed against it by plaintiff At Home Companion Care, LLC ("At Home") and states as follows:

1. By the Complaint, At Home seeks to have this Court declare that it is the owner of certain policies (the "Policies") insuring the life of Don A. Higby ("Higby") issued by UBS, so that, now that Higby is dead, At Home can receive the benefits pertaining to the Policies.

2. At Home commenced this action by filing the Complaint on September 28, 2016.

3. The Complaint was served on UBS, through its registered agent, on September 30, 2016.

4. As discussed more fully in the Brief in Support of Defendant UBS Financial Services, Inc.'s Motion to Dismiss, which is being filed concurrently herewith and which is hereby incorporated by reference, the Complaint is due to be dismissed because At Home has failed to join indispensable parties; namely, the estate of Higby, which is the current beneficiary of the Policies, and Higby's purported agent. Joining one or both of these parties would both

destroy diversity and run afoul of the probate exception to federal jurisdiction. This Court should therefore decline jurisdiction of this case, which is inherently discretionary because of the nature of the relief sought, and dismiss the Complaint with prejudice.

5. A proposed order is attached.

WHEREFORE, defendant UBS Financial services respectfully requests that this Court grant the instant motion to dismiss and enter an order dismissing the Complaint.

Respectfully submitted,

Dated: October 21, 2016

/s/Victor Abraham Delnore
Kristen M. Del Sole (PA 79619)
kristen.delsole@klgates.com
Victor Abraham Delnore (PA 309852)
abe.delnore@klgates.com
K&L Gates LLP
K&L Gates Center
210 Sixth Ave.
Pittsburgh, PA 15222-2613
Telephone: (412) 355-6500
Facsimile: (412) 355-6501

Counsel for Defendant UBS Financial Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on October 21, 2016, the foregoing document was filed via the Court's CM/ECF system, thereby making it accessible to all counsel of record, including the following:

Michael J. Musone
120 W. 10th St.
Erie, PA 1650l
Counsel for plaintiff

/s/Victor Abraham Delnore
Victor Abraham Delnore